

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
May 21, 2007, at 9:00 a.m.
Scott Hart Building Auditorium
301 N. Sanders, Helena, Montana

PRESENT: Secretary of State Brad Johnson and Superintendent of Public Instruction Linda McCulloch

Via Telephone: Lt. Governor John Bohlinger

Secretary Johnson moved for approval of the minutes from the April 16, 2007, meeting of the Board of Land Commissioners. Seconded by Lt. Governor Bohlinger. Motion carried unanimously.

BUSINESS CONSIDERED:

507-1 **FWP: SCOTTY BROWN BRIDGE LAND EXCHANGE**

Ms. Sexton said this is a complex land exchange which resolved some river access issues on the Blackfoot River at the Scotty Brown Bridge area. FWP proposes an exchange of 7.15 acres it owns and bisected private landowners property for a tract of land that is one acre at the new bridge where limited public access has been allowed. FWP has been talking to the Powell County Planning Board about this proposal and has received a positive response. This also went to the FWP Commission last week.

Larry Peterman, FWP Chief Field Operations, said the FWP Commission at its meeting last week was presented the Scotty Brown Bridge land exchange and it approved the exchange. This is, as Ms. Sexton indicated, a land exchange between FWP and the landowners, Tom and Lynn Meredith, at the Scotty Brown Bridge which is southwest of Ovando, upstream from the Clearwater Junction and downstream from the North Fork of the Blackfoot River. It provides critical access at the bridge. It has been an issue we've had with public access at that bridge and we've worked at it for a number of years. Currently the landowner provides a small parking area and about a two-foot corridor that people can walk down to the river. With this land exchange we will receive an acre of land from the landowner in exchange for a sliver of land which bi-sects his property which totals about seven acres. This will allow us to put four parking stalls in there that will accommodate trailers and will also allow for hand launching of trailers over the bank into the Blackfoot River. It is an important access site for us and it resolved some outstanding access issues that had. We have concurrence and approval from the Powell County Planning Board, the Heart Bar Heart Ranch which is adjacent, and the Nature Conservancy who holds the conservation easement on the property, in addition to Tom and Lynn Meredith the property owners. The value of the FWP land is \$150,000, the acre of land on the Blackfoot River was appraised at \$97,000, the difference of \$53,000 will be paid to the department and put into our PR account, our Pittman-Robertson Account which originally purchased the land that the Meredith's will be getting.

Lt. Governor Bohlinger said I've read the summery and I am delighted to know we are working to provide greater access for Montana fisherman and women.

Motion was made by Secretary Johnson to approve the Scott Brown Bridge land exchange. Seconded by Lt. Governor Bohlinger. Motion carried unanimously.

507-2 COMPETITIVE BID HEARING FOR STATE LEASE #2098

Ms. Sexton said on Monday, April 30, 2007, a competitive bid hearing was held for lease #2098 at the DNRC, Tom Schultz was the hearing officer. This was a competitive bid hearing for 40 acres in Silver Bow County. The current lessees are Manya and Marie Uzlic. The high bidder was Courtland and Carol Barney at \$45.37/AUM. We have an opportunity when there is a competitive bid to listen to the two potential lessees and select the one the department believes is most qualified. There was testimony on behalf of the lessee and also the high bidder presented testimony. After listening to the testimony it is the department's recommendation to issue the lease for the next five-year term lease to Manya and Marie Uzlic at the rate of \$16.10/AUM, which is reflective of the prevailing community standard. It is lower than the highest bid but higher than the present bidding rate. There are challenges here with soils, weeds, and the lack of stockwater but it is still a desirable tract of grazing land. It does support a large number of elk. The department believes through the hearing process that the best lessee Mr. Uzlic should receive the five-year term lease at the rate of \$16.10/AUM.

Motion was made by Lt. Governor Bohlinger to approve the rental rate and choice of lessee for Lease #2098. Seconded by Secretary Johnson. Motion carried unanimously.

507-3 REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT
By Klabzuba Oil & Gas Inc.

Ms. Sexton said this is a communitization agreement in Hill County in the Eagle Formation. The tract comprises 50% of the communitized area and the department will receive 6.25% of all gas production. Ms. Sexton recommended approval.

Motion was made by Lt. Governor Bohlinger to approve the communitization agreement request. Seconded by Secretary Johnson. Motion carried unanimously.

507-4 REQUEST FOR APPROVAL OF COMMUNITIZATION AGREEMENT
By Headington Oil LTD

Ms. Sexton said this is another communitization agreement request. This is located in the Bakken Formation in Richland County. If you look at the map, this is unusual because the state's part of this is not the school section, but the bed of the Yellowstone River which runs through this section. There are three tracts and they are only a little over 7% of the communitized area so the state will receive 0.31% of the oil production. This is with several different partners and it allows the state to receive its proper share that will be going to the Common Schools beneficiary. There is a FWP Fishing Access Site on Tract 17 of about 3.66 acres whose funds will go into the General Fund which will be included with the communitization agreement. The other two sections of the Yellowstone River bed will go to Common Schools and then the small tract for fishing access will go to the General Fund.

Lt. Governor Bohlinger said from the information provided I didn't see any estimates as to what kind of revenue might be generated from this agreement. Are there any?

Monte Mason, DNRC Minerals Management Bureau Chief, said a well like this would typically make anywhere from 300 – 700 barrels of oil per day. If we use the figure of 500 barrels per day, \$40 per barrel, about \$20,000. Seven percent of \$20,000 would be the amount we would expect to get at the outset, but over the next 20 years the production will decline until it is depleted.

[Department correction: 500 bopd (barrels of oil per day) x \$40/bbl x 7% WI x 12.5% RI = \$175 per day, or ± \$5,000 per month.]

Motion was made by Lt. Governor Bohlinger to approve the communitization agreement request. Seconded by Secretary Johnson. Motion carried unanimously.

507-5 DMA's REQUEST TO PURCHASE LAND – ARTISAN PARK PROPERTY

Ms. Sexton said this is for purchase of the Artisan property, we do have two here that are related, this item and the next item. They are both from the Department of Military Affairs. This one is for the purchase of 2.65 acres of land, this is non trust land adjacent to Ft. Harrison, which will be used for the relocation of the entry gate to accommodate current terrorism standards and to alleviate traffic hazards that exist at the intersection of Williams Street and Country Club Avenue.

Ralph DeCunzo, Dept. Military Affairs Facilities Office, said the Artisan Park property and the MacDonald property in the next item are directly across east from the entrance gate to Ft. Harrison. Artison Park is a very large subdivision that is proposed, and in fact, they are moving forward with the development of it now. It is close to the entrance to Ft. Harrison. We are in the process of designing a new entrance gate relative to the upgraded terrorist and anti-terrorism force protection to provide additional protection to the gate and the Fort itself. We feel we need a buffer zone between the homes and the Fort. This is just the beginning of a long term Master Plan for that area. We've worked with the county and the city and we hope someday to abandon the piece on Williams Street that runs in front of the Fort therefore providing even a larger buffer. There are also some additional homes that in the future we hope to be able to acquire. But the immediate need is to acquire that property from the developer in order to provide an entrance gate that will ultimately come from the existing Fort gate across Williams Street and ultimately tie that into Country Club Avenue. In addition, if we are able to acquire both pieces we will be able to mitigate an extremely dangerous intersection of Country Club Avenue and Williams Street. In the past several years the city has recorded over twenty accidents at that intersection. But the Artisan Park is owned by the developer and that is the immediate piece we are going to pursue. And ultimately that entrance gate and road access will extend from Country Club into what is currently the Fort entrance gate.

Ms. McCulloch asked this will be state land not state trust land?

Mr. DeCunzo said yes that's right.

Mr. Johnson said the balance of this triangle that is east and south is still going to be developed?

Mr. DeCunzo said yes, if you look at the triangle on the map, Artisan Park runs all the way down to that first diagonal that runs southeast. Artison Park is an extremely large subdivision, I think it is planned to have over 700 units both multi-family, commercial and residential. There four rectangles just to the left of the triangle on the map they are private dwellings that currently exist. Artison Park extends all the way down to the entrance into Ft. Harrison VA Center.

Mr. Johnson said but DMA would be purchasing just that small triangle.

Mr. DeCunzo replied yes.

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Motion was made by Secretary Johnson to approve the purchase of Artison Park property. Seconded by Lt. Governor Bohlinger.

Mr. Johnson said looking at the purchase price on the summary sheet the appraised value of the property is \$95,400 and the agreed purchase price is \$200,000. How do we do that?

Mr. DeCunzo said I can address the question of what the disparity is in the price. We had the property appraised by the Corps of Engineers who appraised it as standard property agricultural. The disparity in the price is because the developer of the property is required to provide certain amenities on site as well as off site for the city. The price he has on here is reflective of the costs associated with those amenities and improvements he is required to make. He has been very gracious in working with us as we have with both the county and the city. But the value of the property is for lots that he could sell and that's really the way he valued the property. We can't fault that economic analysis because it is property that he could sell and get a good return on. The appraisal here just takes into account raw land it doesn't take into account all the amenities and the value of the property as residential lots or potential commercial lot.

Ms. Sexton said we went over this at the staffers' meeting and the appraisal was done at the current use rather than the highest and best use. Had the appraiser done the highest and best use, which would have been residential subdivision, it would have been higher.

Mr. Johnson said can we legally approve acquisition above appraisal?

Ms. Sexton said yes we can.

Lt. Governor Bohlinger asked what sort of timeframe there was for the development of the Artisan Park property? How soon will they be selling lots and building homes there?

Mr. DeCunzo said I am not exactly sure but I believe within the next twelve months they plan to begin marketing the property. I know they are currently scraping and moving dirt, albeit it is a relatively minor effort. The surveyors have been out there everyday staking it.

Lt. Governor Bohlinger said it is my understanding the success of Artisan Park is dependent upon its ability to have sewer and water. Is the City of Helena moving forward with plans to bring water and sewer out there?

Mr. DeCunzo said yes.

Lt. Governor Bohlinger asked do you know what the timeframe is on that?

Mr. DeCunzo replied no I do not. I know that up to Williams Street to include Country Club Avenue will be annexed into the city. I believe the subdivision has gone through its final approval so annexation is right on the heels of that approval.

Ms. Sexton said I will add as far as paying more than the appraised value, at DOT this is a practice that they have exercised. It has been our policy through DNRC and through FWP to not pay above the appraised value. But in other agencies, that has been a practice.

Lt. Governor Bohlinger said so the value is based on the future value of these lots that are going to be sold and that is all going to come together within the next twelve months.

Ms. Sexton said that's correct. If the present owner were not to sell to DMA my understanding is those lots would be part of the subdivision and that would be the value they could recoup from the sale of the lots in the subdivision.

Lt. Governor Bohlinger said I understand.

Mr. Johnson asked what is the source of the funding for the purchase?

Mr. DeCunzo said it comes from the federal government, the Department of Defense, which is the way we are funded through a contract with the federal government.

A vote was taken on the motion on the floor, it carried unanimously.

507-6 DMA's REQUEST TO PURCHASE LAND – MacDONALD PROPERTY

Ms. McCulloch said now we move right into discussion of the smaller piece within the triangle.

Mr. DeCunzo said yes and it is privately owned by an individual, an elderly couple, who have expressed interest to leave the property and move somewhere else.

Motion was made by Lt. Governor Bohlinger to approve the purchase of the MacDonald property.
Seconded by Mr. Johnson.

Mr. Johnson asked what the purchase price would be for the smaller parcel.

Mr. DeCunzo said the purchase price is about \$142,000, we have agreed to do something for the owners that may bump it up by a \$1,000, but it is under the appraised value.

A vote was taken on the motion to approve. Motion carried unanimously.

507-7 FIVE VALLEYS LAND TRUST/TARKIO LAND EXCHANGE FINAL APPROVAL

Ms. Sexton said this is for final consideration of the FVLT and DNRC exchange. The state will exchange 504 acres of surface and mineral acres of state trust land and the FVLT will exchange a total of 581 acres. Of that 530 acres will be mineral estate, so we will gain both in mineral estate and surface. The beneficiaries for the disposed lands are the Normal School is disposing of 451 acres and they will acquire 525 acres, Common Schools is disposing of 53 acres and will acquire over 56 acres. We feel the acres, the land value, and income were equitably distributed between the two beneficiaries. There are a lot of folks who worked a long time on this exchange. This is part of the Alberton Gorge effort that has been going on for a number of years between a number of agencies including USFS, FWP, Montana Power Company, River Network and NW Energy Corporation. The FVLT is the successor to the River Network, NW Energy is the successor to Montana Power Company. In July 2005, the Board gave unanimous preliminary approval for us to proceed with the analysis. There were more properties involved in this and we have narrowed down the analysis through the process to determine just which parcels would be utilized in this exchange. Hearings were held in April 2007, 25 people attended and comments were generally in support of the exchange. Mineral County Commissioners did support some other property that was initially looked at but because of access issues and other factors it did not fit into our criteria for exchange and these parcels were removed because of the high value and because of river

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frontage and wildlife values. In this exchange we are gaining river frontage acreage, consolidating state land, and access will be improved. There is the potential for long term appreciation for the land acquired from FVLT. For criteria of equal or greater income, there will be a net gain in income. With the river frontage we will be gaining over a mile. It is our recommendation that this land exchange does meet and exceed the land exchange criteria and I recommend final approval. I want to thank all the folks who worked on this, Greg Tollefson from FVLT and Bob Storer of DNRC they put in a lot of time working on this exchange and put in a good deal of effort to make sure it is equitable.

Greg Tollefson, Five Valley Land Trust (FVLT), said we got involved in this exchange, as did DNRC, as part of a gentleman's agreement at the culmination of the Alberton Gorge exchange in 2004. That agreement was based upon concerns coming from some agency folks, recreationists, and local landowners in Tarkio about the public values, natural values, and recreational importance of the piece of land FVLT received in the exchange. At the same time, the Mineral County Commission was concerned about the loss of their private land tax base through the public acquisition of the Gorge. So we moved ahead with this land exchange for a number of reasons, not the least of which was to assure some land was moved back into private ownership in Mineral County and would become available for residential development. As a result of the land exchange we have now crafted, we will be moving more than 500 acres of land back into private ownership in Mineral County. I want to thank the staff of DNRC for their forbearance and determination to get this thing done. Its been a difficult effort simply due to the complexity and detail involved.

Lt. Governor Bohlinger said I would like to add that the analysis he provided is so thorough and comprehensive and complete, there is only one conclusion one can make and that is this is certainly a beneficial thing for the people of Montana and the state and I would move approval.

Mr. Johnson seconded the motion.

Mr. Johnson said this net increase in revenue assumes the harvest of timber on one of these parcels and my question is, I don't know the local politics around Tarkio, are we going to be able to cut those trees?

Bob Storer, DNRC SW Land Office, said regarding your question, there are no sure things. We have to go through a MEPA analysis, including public scoping, but my inclination would be to think there should be no problems. The type of harvest we would likely propose is a thinning harvest. We have done it on lands immediately adjacent to this and as is indicated it is consolidation and we have treated the acres right next door.

Mr. Johnson said these numbers reflect that management strategy?

Mr. Storer said yes.

A vote was taken on the motion to approve. Motion carried unanimously.

507-8 RED LODGE LAND BANKING PARCEL SALE #201

Ms. Sexton said this is a parcel that has received preliminary approval. It is located in Red Lodge and is 295 acres, an isolated parcel. The department has gone through the due diligence process and has been working with FWP to look into wildlife issues which have been resolved. It is apparent from discussions that the lessee will likely donate a conservation easement on this property once it is in private hands. We have gone through the appraisal process. As you can see here, the two appraised values with and without

access. The appraised value with access is \$4,550 per acre for a total of \$1.3 million and it is my recommendation we set the minimum bid at the appraised value with access.

Motion was made by Secretary Johnson to approve the sale of parcel #201. Seconded by Lt. Governor Bohlinger. Motion carried unanimously.

The Board addressed the next three timber sales as one item.

507-9 COOL FLAT 4X4 TIMBER SALE

This proposed timber sale is located approximately 1 – 3 miles east of Lincoln and proposes to harvest from ten units totaling 320 acres. The estimated sale volume is 2,288 MBF with an estimated minimum bid value of \$26.00/ton. There will be a Forest Improvement Fee of \$2.48/ton. This harvest is a commercial thin/sanitation harvest designed to emulate low to mixed severity fire regimes. Treatment is intended to improve timber stand growth and vigor, reduce the risk of wildfire in the interface, address insect and disease outbreaks and maintain seral species. No old growth stands will be harvested. Access is across existing roads with .54 miles of new road construction and .48 miles of an old existing road that would be obliterated.

507-10 IRON GULCH TIMER SALE

This proposed timber sale is located 25 miles north of Lewistown and proposes to harvest from two units totaling 250 acres. The estimated sale volume is 1,000 MBF with an estimated minimum bid value of \$17.50/ton. There will be a Forest Improvement Fee of \$.40/ton. This prescription would encourage development of multi-layered stands and forest structure by retaining a range of size and age class. No old growth would be harvested. Access would require 2.95 miles of temporary road construction.

507-11 SHORTS MEADOW/EVERS CREEK TIMBER SALE

This proposed timber sale is located 11 miles west of Whitefish and proposes to harvest from 16 units totaling 389 acres. The estimated sale volume is 4,239 MBF with an estimated minimum bid value of \$25/ton. A Forest Improvement Fee of \$2.87/ton will be assessed. This will be a commercial thin harvest on 63 acres and seedtree on 326 acres. After harvest, 40 acres would be planted with ponderosa pine. No old growth will be harvested. Access to the sale will require .25 miles of new road construction. Maintenance on 3.8 miles of existing roads is required to bring the roads up to current BMP standards.

Ms. Sexton recommended approval of the three above-described proposed timber sales.

Motion was made by Secretary Johnson to approve the proposed Cool Flat 4X4, Iron Gulch, and Shorts Meadow/Evers Creek Timber Sales. Seconded by Lt. Governor Bohlinger. Motion carried unanimously.

507-12 RIGHTS-OF-WAY APPLICATIONS

A. Rights of Way Applications

Ms. Sexton said we have 44 applications for right-of-way this month. There are some historic utility, private access roads requests, some new access for utilities, one navigable river crossing on page 42, and one private access road on page 43, which is under the new policy. This month we have #14180 through

14182, #14184 through 14186, and #14188 through 14197 from Qwest Communications for buried telecommunications distribution lines; #14199 through 14217 from Sun River Electric Cooperative, Inc. for overhead electric distribution lines; #14234 and 14235 from Big Rose Farm, Inc. for a buried 6" domestic water line; #14236 from Mission Valley Power for a buried electric distribution line; #14237 from Star X Ranch for a private access road for conducting normal farming and ranching activities; #14238 and 14239 from Southern Montana Telephone Company for buried fiber telecommunications cables; #14240 from Ouzel Reach Ranch LLC for a private access bridge to a single family residence; #14241 from David and Shelli Hoerning for a private access road to a single family residence; and #14242 from Corey Hills and Dorothea Schaeffer for a private access road to a single family residence.

Ms. Sexton requested approval.

Motion was made by Lt. Governor Bohlinger to approve the rights-of-way package. Seconded by Secretary Johnson. Motion carried unanimously.

B. Pry-Burn Reciprocal Access Agreement

Ms. Sexton said we have segregated these because they are reciprocal access agreements with Plum Creek Timberlands.

David Groeschl, DNRC Forest Management Bureau Chief, said this involves the granting of easement across state parcels to Plum Creek as well as acquiring easements across Plum Creek on several parcels. We would be granting across on Pry and Spring areas and would be gaining or acquiring access in the Burn Gulch and Donovan Creek areas. In addition, the exchange of easements under the reciprocal would be for 60 foot all lawful purpose, we would also be gaining non-motorized public access to approximately 1,391 acres of state trust land. An item of note on this particular reciprocal access, it is unique in that the parcels we are granting access across, the two state parcels, we will not be holding those parcels much longer. We will not be owning them since those are two parcels involved in land exchanges. One is in the Tarkio land exchange with FVLT and the other parcel is with the Forest Service in the Lolo land exchange. Both parties, the Forest Service and the FVLT, are aware of the granting of these easements and are also aware of the fact that neither party is interested in maintaining this 1% conveyance fee since they will be the owners of those parcels into the future. FVLT may not be holding those parcels very long anyhow. In this exchange basically we are waiving the 1% conveyance fee since we will not be holding those properties. Beyond that, we will be gaining access across 4.13 miles of road and will be granting access across .31 miles of road. Given the disparity in the distance of access we are gaining versus granting, the balance we owe on this particular access agreement would be \$48,117. We are applying that balance to the balance sheet we have with Plum Creek that we zero out at the end of each fiscal year. Last month we had a reciprocal access where Plum Creek owed the department \$23,562 and we owe \$48,000 on this one, so right now there is a net balance due by the state to Plum Creek of \$24,554.

Motion was made by Lt. Governor Bohlinger to approve the reciprocal access agreement. Seconded by Secretary Johnson.

Mr. Johnson said is there a history or precedent of waiving the conveyance fee?

Mr. Groeschl said every time we go in to negotiate a reciprocal access the 1% conveyance fee is one of those components of the reciprocal access that is discussed with the cooperator. On the last two reciprocal access packages we brought to the Board the cooperators had agreed to pay the 1% conveyance fee. So each time it is unique and we negotiate based upon the circumstances of that individual reciprocal

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agreement. In this case given that the state will no longer be holding those parcels and that the new owners of the state parcels were not interested in maintaining that 1% conveyance fee.

Mr. Johnson said I am not necessarily disagreeing with that part of the negotiation. I was wondering if we are charting some new territory here, and apparently we are not. We have waived this fee before.

Mr. Groeschl said since the new policy this is the first reciprocal access new package we brought forward where we waived the 1% conveyance fee.

Ms. Sexton said it is clear in our rules for reciprocal access policy that this is something that is negotiable.

A vote was taken on the motion to approve. Motion carried unanimously.

Motion to adjourn was made by Mr. Johnson. Seconded by Lt. Governor Bohlinger.